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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/802,835

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Andrew P. Lull

1963/US

8027

80705

7590

12/14/2009

Dorsey & Whitney LLP
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EXAMINER

BAKER, LORI LYNN

ART UNIT

PAPER NUMBER

3764

MAIL DATE

DELIVERY MODE

12/14/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/802,835	Applicant(s) LULL ET AL.	
	Examiner Lori Baker	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-12, 72, 73 and 77-140 is/are pending in the application.
- 4a) Of the above claim(s) 100-140 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7 and 8 is/are allowed.
- 6) ☒ Claim(s) 6, 73 and 77-93 is/are rejected.
- 7) ☒ Claim(s) 9-12 and 94-99 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>7/2/09</u> . | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

1. Applicant's arguments see page 13, paragraph III, filed 7/2/09, with respect to an absence of an English Translation [on the record] for the Taiwan Patent Publication No. 379572Y have been fully considered and are persuasive. The non-final rejection of paper mailed 3/5/09 has been withdrawn. A non-final rejection follows including the missing English Translation of the Drawings relied upon for the Taiwan Publication.

Election/Restrictions

1. Newly submitted claims 100-140 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the claims introduces subject matter distinctly directed to different embodiment. For example, "the actuator configured to compensate for a *non*-constant force of the springs", "at least part of the actuator located below a seat", "at least part of an actuator includes the spiral pulley", "two adjustable arms interconnected by at least one gear", etc..

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 100-140 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Objections

Claims 9-12, 94-99 are objected to because of the following informalities: It is the Examiner's position that Applicant has evoked sixth paragraph, means-plus-function

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language to define Applicant's invention. Therefore the Examiner has objected to the claims for the reasons set forth above in the objection to the specification.

Applicant asserts that the claim element "means" is a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, it is unclear whether the claim element is a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph, because it is unclear whether the claim limitation is modified by sufficient structure for performing the claimed function or it is unclear whether the corresponding structure is sufficiently disclosed in the written description of the specification. If applicant wishes to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to:

(a) **Amend** the claim to include the phrase "**means for**" or "step for" in accordance with these guidelines: the phrase "means for" or "step for" must be modified by functional language and the phrase must not be modified by sufficient structure, material, or acts for performing the claimed function; (For example, Claim 9, line 4, "means, attached to said frame for providing a constant load to a user, said means utilizing resilient bands;" should read –means for providing a constant load to a user, said means attached to said frame and utilizing resilient bands--.) **or**

(b) **Show** that the claim limitation is written as a function to be performed and the claim does not recite sufficient structure, material, or acts for performing the claimed function which would preclude application of 35 U.S.C. 112, sixth paragraph. For more information, see MPEP § 2181. Since claims 10-12 and 94-99 are in the chain of dependency to claim 9, they too are subjected to the same rejection.

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Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 6, 73, 78-82 and 84-99 are rejected under 35 U.S.C. 103(a) as being unpatentable over TW 379572Y. The rejection from the previous office action is incorporated herein (see figure 1 and drawing translation below). Substituting one known resistance device for another would have yielded predictable results and would have been obvious because a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.

Drawing translation of TW 379572Y

Key to Figures

(10) Weight lifting device	(20) Machine support	(22) Base support
(221) Longitudinal bar	(222) Horizontal bar	(27) Upright bar
(271) Collar	(28) Strut block	(29) L-shaped base bar
(30) Damping element	(32) Carrying bar	(321) Fixing part
(34) Elastic support spacer block	(36) Weight device	(37) Weight block
(371) Threaded hole	(38) Driving part	(39) threaded bar
(40) Driving unit	(41) Coupling rod	(45) Holding frame
(46) Base part	(47) Pivot joint	(48) Sleeve
(49) Holding handle	(51) control device	(52) Joint lever
(53) Lockplate	(54) locking hole	(55) Through hole location
(56) Latch fitting	(561) Holding part	(562) Stopper
(57) Step part	(58) Stopper	(59) Elastic element
(61) Coupling device	(62) Plate	(63) Recess
(64) Rope body	(70) Reclining frame	(72) Frame bar
(73) Catch lock	(74) The first reclining pad	(76) The second reclining

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(78) Adjusting part	(79) Clamping part	pad
(82) Rope body	(84) Carrying bar	(80) Weight lifting device
		(99) Floor sheet

4. Claims 77 and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over TW 379572 in view of Olschansky et al. The rejection from the previous office action is incorporated herein. Substituting one known load adjustment device for another would have yielded predictable results and would have been obvious because a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.

Conclusion

Claims 7-8 and 89-93 are allowed. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lori Baker whose telephone number is (571) 272-4971. The examiner can normally be reached on Monday-Friday, 8am-5pm. For interview requests, please submit PTO Form 413A.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on 571-272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lori Baker/
Primary Examiner, Art Unit 3764